

Virginia Regulatory Town Hall

Proposed Regulation Agency Background Document

Agency Name:	Department of Health (State Board of)
VAC Chapter Number:	VAC 12-5-550
Regulation Title:	Rules and Regulations Governing Vital Records
Action Title:	Proposed Amendments to Vital Records Regulations
Date:	January 4, 2000

This information is required pursuant to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), and the *Virginia Register Form, Style and Procedure Manual*. Please refer to these sources for more information and other materials required to be submitted in the regulatory review package.

Summary

Please provide a brief summary of the proposed new regulation, amendments to an existing regulation, or the regulation being repealed. There is no need to state each provision or amendment or restate the purpose and intent of the regulation, instead give a summary of the regulatory action and alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

The purpose of the proposed action is to review the regulations and amend them so as to ensure the accurate, uniform, efficient, and confidential administration of the Commonwealth's system for maintaining vital records, such as birth, adoption, marriage, divorce, death, and fetal death records, and for allowing necessary changes to these records. Resulting amendments may: (I) provide for the electronic reporting of births; (II) allow delayed reporting of births when warranted; (III) specify information needed to evidence home births; and (IV) establish protections against the unauthorized, unwarranted, and indiscriminate disclosure of vital records.

Resulting amendments may also address other issues relating to these regulations that the public, regulated persons, and health planning community deem appropriate to raise in response to this notice.

Basis

Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and web site addresses, if available, for locating the text of the cited authority must be provided. Please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law.

Sections 32.1-12 and 32.1-250 of the **Code** authorizes the Board of Health to promulgate procedural rules for the conduct of activities for vital records and health statistics system and to promulgate regulations. The Board has the responsibility to promulgate, amend, and repeal, as appropriate, regulations necessary to implement the vital records and health statistics system, and to collect, catalog, and evaluate information reported to it. The scope of this mandate is appropriate for the adequate and effective administration of the vital records and health statistics division and for the program necessary to operate it.

Purpose

Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the proposed regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.

The purpose of the regulations, and the intended amendments, is to ensure the uniform and efficient administration of the system of vital records through the establishment and enforcement of regulations setting the minimum standards for completing and filing vital records, in compliance with state and federal laws. The purpose of the regulations cannot be served adequately without a reliable and efficient system in which good and permanent vital record files are acquired and preserved for safekeeping and current health statistics are effectively reported.

Most of the **Regulations Governing Vital Records** have not been amended since they were promulgated in 1950. The content of the regulations needs updating to reflect current societal practices, to improve clarity of language in specific sections, and to add other requirements, such as in the reporting of deaths, the registration of delayed birth registrations and the evidence needed for home births. These amendments would make the regulations easier to comprehend by the affected entities and the public while at the same time would make it more difficult for fraud to occur.

Moreover, additional provisions need to be amended and added in light of current changes in reporting methodology and technology. For example, added provisions would allow for the electronic reporting of birth data directly from the hospitals to the State Registrar as allowed by the **Code** as

amended in 1994. By electronic reporting, the entire birth registration process is more accurate and much faster, and thus, for example, health data relating to infants at birth becomes available in a more timely way for appropriate public response to such matters as serious congenital anomalies.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement providing detail of the regulatory action's changes.

The proposed amendments are necessary to recognize the growing number of home births that are not registered by attendants at delivery and to assist in defining the kinds of evidence necessary to establish the required registration information, as well to update certain terms and provisions as a result of state or federal law. Additions or enhancements to the regulations include:

1. Clarification for filing a late or delayed birth record;
2. Clarification on matters such as primary and secondary evidence required to place a delayed birth on file, who is eligible to receive birth and death records, and additions to the definition section to adequately reflect terms currently used in the industry for example, funeral service licensee instead of, funeral director; and
3. Incorporation of mandated requirements by statute. Sections 32.1-263B, 32.1-267B and 32.1-268A, require social security numbers or control numbers issued by the Department of Motor Vehicles to be included in the data collected on death, marriage and divorce records. In compliance with the Taxpayer Relief Act of 1997 (PL 105-34), the Social Security Administration (SSA) is required to obtain parents' social security numbers on original social security number cards for individuals who have not attained age 18 and share this information with the Internal Revenue Service (IRS). Parents may request social security cards for their newborn(s), by participating in the Enumeration At Birth program (EAB). Under this program parents sign the birth record requesting that vital records submit required data to SSA and the social security card is sent directly to the parent. This program requires that social security number of parent (s) be submitted to SSA when social security cards are requested.

Issues

Please provide a statement identifying the issues associated with the proposed regulatory action. The term "issues" means: 1) the primary advantages and disadvantages to the public of implementing the new or

amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please include a sentence to that effect.

The primary advantage of these amendments is that it clarifies for citizens the requirements for filing a home birth, late or delayed birth record. Conflicting language has been removed and clearer language was substituted when indicated.

These regulations contain procedural rules for the registration and reporting of vital events including birth, death, fetal death, marriage, divorce and adoption and any changes to a vital record. They spell out the rules for detailing standards and requirements for collecting and reporting vital event information.

Aspects of the regulations affect about 100 hospitals, 480 funeral homes, 35 local health departments and their corresponding districts, four medical examiner district offices, numerous city and county clerks' offices and the citizens of the Commonwealth.

The affected organizations and individuals reviewed these regulations under Executive Order 15 (94) discussed potential alternatives to the regulations to determine if less burdensome alternatives might exist. As the information contained in the vital records is both sensitive and confidential, the advisory committee did not find the requirements for the administration of the system overly burdensome. No known alternatives exist that would better protect the public in this regard.

There are no known disadvantages to the public, private persons, the agency or the Commonwealth presented by these proposed regulations.

Fiscal Impact

Please identify the anticipated fiscal impacts and at a minimum include: (a) the projected cost to the state to implement and enforce the proposed regulation, including (i) fund source / fund detail, (ii) budget activity with a cross-reference to program and subprogram, and (iii) a delineation of one-time versus on-going expenditures; (b) the projected cost of the regulation on localities; (c) a description of the individuals, businesses or other entities that are likely to be affected by the regulation; and (d) the agency's best estimate of the number of such entities that will be affected.

The proposed amendments to the Regulations Governing Vital Records will have minimal fiscal impact on the agency and regulated entities. Currently all birthing facilities in the Commonwealth have voluntarily complied with reporting births electronically to the State Registrar. The regulations officialize

what is customary practice for reporting births. The Virginia Department of Health has made the statutory changes to the forms used by reporting sources for marriage, divorce and annulments.

The proposed regulations do not require additional changes to currently utilized forms used by reporting sources.

Projected Costs to Virginia Department of Health

There are no anticipated additional costs to the Virginia Department of Health as a result of the proposed amended regulations.

Projected Costs to Reporting Sources

There are 69 hospitals with birthing facilities in the Commonwealth. All facilities have volunteered to report births electronically and there are no costs to reporting sources as a result of the proposed regulations.

Projected Cost to Citizens Requesting Amendments to Vital Records or Requesting to place a delayed birth on file.

There is no fee charged to citizens who are requesting to amend a vital record or place a delayed birth on file with the Office of Vital Records and Health Statistics. Once the changes have been made or the delayed birth is placed on file there is the required \$8.00 fee for the certified copy of the vital record.

Detail of Changes

Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description of changes implemented by the proposed regulatory action. Where applicable, include citations to the specific sections of an existing regulation being amended and explain the effect of the proposed changes.

Definitions, 12 VAC 550-05

Addition of definitions board, Commissioner, Department, informant, primary evidence, midwife, registrant and secondary evidence.

12 VAC 5-550-70

Allows the State Registrar to use electronic media to issue forms and supplies for the registration of vital events.

12 VAC 5-550-90

Specifies that electronic media used for the filing of vital events must be approved by the State Registrar.

12 VAC 5- 550- 100

Addition of responsibilities, evidence and data elements required for the filing of home births. The birth is to be registered as soon as possible with the local health department in which the birth occurred.

12 VAC 5- 550- 110

Allows for the use of the control number issued by the Department of Motor Vehicles on a death record if the decedent has no social security number.

12 VAC 5- 550- 130

Requires that the marriage certificate contain the social security number or control number issued by the Department of Motor Vehicles for the bride and groom.

12 VAC 5- 550- 140

Requires that the report of divorce or annulment contain the social security number or control number issued by the Department of Motor Vehicles of both the husband and wife.

12 VAC 5- 550- 190

Allows for the use of approved electronic media for maintaining records and eliminates unnecessary data elements for collection.

12 VAC 5- 550- 200

Changes reporting times from the 5th and 20th day of each month to the 5th day of the month for reporting events by special registrars. City and county registrars will transmit reports weekly instead of the 10th and 25th day of the month.

12 VAC 5- 550- 240

Adds that a deceased person cannot have a delayed birth record placed on file. Specifies that applications for a delayed birth record not completed within one year will be dismissed and evidence returned to the applicant.

12 VAC 5- 550- 260

Clarifies what is acceptable as primary evidence when requesting a delayed birth registration.

12 VAC 5- 550- 280

Specifies the conditions for which new birth certificates are established after adoption, legitimization, Acknowledgement of paternity, or court determination of paternity and change of sex.

12 VAC 5- 550- 290

Changes the word natural to biological and refers to Code §20- 49.8 for the change. Adds a timeframe and condition when a mother may not sign an acknowledgement of paternity.

12 VAC 5-550- 300

Specifies the timeframe of 10 months at the time of the birth or preceding the birth when a mother can sign an affidavit of paternity.

12 VAC 5- 550- 310

Adds the requirement of both parents signatures to change a surname and conditions not requiring both parents signatures in court determined paternity.

12 VAC 5- 550- 320

Establishes the evidence required prior to changing the sex (gender) on a birth record.

12 VAC 5- 550- 330

Allows for a change of sex to be made when creating a new birth certificate.

12 VAC 5- 550- 350

Eliminates confusing language and uses the term funeral service licensee replacing the word funeral director, which has been changed by the regulations governing funeral services.

12 VAC 5-500- 400

Provides instructions for preparing out of state transit permits.

12 VAC 5- 500- 450

Specifies where census data used as evidence for a delayed birth can be obtained and changes the five-year requirement to eight years.

12 VAC 5- 500- 470

Clarifies who is eligible to obtain birth and death records.

Alternatives

Please describe the specific alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action.

The affected organizations and individuals that reviewed these regulations under Executive Order 15 (94) discussed potential alternatives to the regulations to determine whether less burdensome alternatives might exist. As the information contained in the vital records is both sensitive and confidential, the advisory committee did not find the requirements for the administration of the system overly burdensome. No known alternatives exist that would better protect the public in this regard.

Public Comment

Please summarize all public comment received during the NOIRA comment period and provide the agency response

The Virginia Department of Health received several comments concerning the registration of home births. Many citizens were given misinformation from an unknown source indicating that the Department would not allow the registration of home births. Each email and written comments concerning home births were responded to with the correct information concerning the proposed amendments to the regulations. Mr. George C. Green, representing the Peninsula Families for Natural Birth and Health (a home birth advocate organization) was present during the regulatory review process. This organization was requesting clear and consistent guidelines for the registration of home births. Representatives from the funeral service industry, Virginia Funeral Directors Association, Virginia Board of Funeral Directors and Embalmers, local health department, Regulatory Support Services and one private citizen.

The majority of comments centered on requests for clarity of language in the regulations and updating language contained in the regulations to commonly used terminology.

Clarity of the Regulation

Please provide a statement indicating that the agency, through examination of the regulation and relevant public comments, has determined that the regulation is clearly written and easily understandable by the individuals and entities affected.

The affected organizations and individuals that reviewed these regulations under Executive Order 15 (94) have through examination have determined that these regulations are clearly written and easily understandable by the individuals and entities affected. The organizations which were represented are: the Virginia Funeral Directors Association, The Board of Funeral Directors and Embalmers, The Funeral Directors and Embalmers Association, Deputy Registrar (local health department), PENFAM (Families For Natural Births and Health), Regulatory Support Services Representative, vital record staff and one public citizen.

Periodic Review

Please supply a schedule setting forth when the agency will initiate a review and re-evaluation to determine if the regulation should be continued, amended, or terminated. The specific and measurable regulatory goals should be outlined with this schedule. The review shall take place no later than three years after the proposed regulation is expected to be effective.

The Virginia Department of Health conducted a review of these regulations in 1999. The Virginia Department of Health will initiate a review and reevaluation of the regulations by March 1, 2002, to determine if there should be any amendments to the regulations and determine the effectiveness of the proposed amendments to the regulations. The measurable goal is to determine if the regulations provide consistent guidance and standards for the administration of the system of vital records and health statistics.